Statement of John W. Moscow
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My name is John W. Moscow. I am a partner in the New York City law firm of Rosner Moscow & Napierala. From August 1972 through December 2004 I served as an assistant district attorney – a prosecutor – in the New York County District Attorney's Office, starting with Frank S. Hogan and continuing for the past thirty years with Robert M. Morgenthau. Over the past twenty five years I personally prosecuted and supervised the prosecution of sophisticated economic crimes involving large and small scale international theft, fraud, and, of necessity, money laundering.

I deeply appreciate the Committee's invitation to appear here this afternoon to discuss the role of off-shore banks in aiding capital flight, money laundering and other illegal activities including the possible support of terrorism, and in discussing how international banks help countries subject to sanctions by the United States get around the sanctions imposed by the United States. I appreciate the opportunity to clarify my own thoughts on what money laundering is, both as a defined crime, and more importantly, and as process, what if anything should be done about it, and what if anything can be done about it

The issues which you raise go directly to the heart of the operation of the world's financial system in which all countries of the world have interests,

sometimes conflicting interests. Money is power. The ability to move money without detection is the ability to exercise power without being held accountable for the uses to which the money is put. Between the funding of narcotics dealers, the protection of plutocrats destroying the economies of their home countries to put money aside for themselves, their families, and friends, the destruction of the tax bases of the industrialized nations, the use of foreign funds to swing elections and the horrible corrosive consequences to the idea of government legitimacy, the process of money laundering through financial institutions must be of concern to us all.

In talking about money laundering I bring to bear a perspective which is uniquely my own, with a background that not everyone here shares. I am not a banker, nor a bank regulator. I do not work for a Fortune 500 company, a trade association or an international law firm.

Rather I was an assistant district attorney in Manhattan — New York County, to use its official name — who spent many years charged with prosecuting those crimes and offenses committed in the 22 square miles of the County, or within the county's jurisdiction as defined; a very different matter indeed, as you will hear.

Starting in 1977 I prosecuted economic crimes, sophisticated and simple, which make up the criminal side of the white-collar world in Manhattan. I have dealt with securities frauds, frauds against government agencies, tax shelter frauds, and corruption cases. Starting in 1989 I examined or prosecuted the Bank of Credit and Commerce, International (BCCI), certain aspects of the collapse of

the Venezuelan banking system, events at the Bank of New York and a number of substantial international securities frauds involving victims from around the world. My views are those of someone who has sought to gather evidence of financial crimes, and had that evidence withheld.

In speaking with you I would like to thank two men who have greatly influenced my thinking in this area. One is my boss, Robert M. Morgenthau, the District Attorney of New York County, who has led the fight against money laundering for the past 35 years. The other is Dr. Barry Rider, the one-time Director of the Institute for Advanced Legal Studies in London, and the moving force behind the Cambridge Symposium on Economic Crime. He has contributed greatly to my understanding of the situation, but who is not to be held accountable for what I say. My views are my own, and I speak only for myself.

First some definitions are in order. There are statutes in various jurisdictions making "money laundering", as various defined in different jurisdictions, a crime. And in fact money laundering should be a crime. But it is more important to consider what money laundering really is, a process of concealment, lest we get caught up in trivializing definitions.1

"Money laundering" it is a process for the concealment of evidence, in which a person seeks to evade responsibility for the ownership, origin or the use of funds. A person who seeks to launder funds wants to able to achieve results without having to accept responsibility for such results or the means used the achieve them. He wants the benefits of ownership, without any of its liabilities.

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1 The differences in definitions may make extradition from nation to another for international money laundering far more complex than it should be.

And those benefits can be achieved by laundering money. Money can be laundered in a variety of ways – smuggling currency, unwritten underground banking transactions, use of banks in jurisdictions with bank secrecy, or corporate secrecy, or an inappropriate use of trusts, among other means.

For you to follow my conclusions as to where we are and where we are going to be in a few years a little background is in order.

The fight against money laundering was initially started by Robert M. Morgenthau in the mid-1960s, when he, as United States Attorney for the Southern District of New York, was thwarted in gathering evidence from Swiss Banks and certain subsidiaries of American banks about Unites States securities fraud and United States Army black marketeering. That fight gathered strength with the war against drugs, and both Congress and the American bank regulators adopted the cause. Congress in 1986 passed an anti-money laundering law which has dramatically changed the face of American law enforcement, even though it did not make illegal the transfer of funds from such national leaders as Marcos, Salinas, Mobutu, Suharto, Abacha or Pinochet.2

Bank regulators have, over the past nineteen years, adopted the anti-money laundering cause as their own. Entire new bureaucracies have been created within the ranks of the regulators and the regulated to deal with the problem; this aspect of the war against drugs looks as though it has become an

2 The federal anti-money laundering covers almost all local crime, such as securities fraud, bankruptcy fraud, and harboring an illegal alien. The penalties for money-laundering, however, are draconian, and, taken with the federal guidelines, have given federal prosecutors far more power, individually, than they have ever had, and have incidentally given the cause of fighting money-laundering a very bad name.

employment tool.3 With the passage of the USA PATRIOT Act in October 2001 those tendencies were re-enforced by adding anti-terrorism to the tasks anti-money laundering personnel are supposed to undertake.

Entire new regulatory entities – the Financial Action Task Force, Financial Stability Forum, and now even groups from OECD -– have sprung up to measure compliance with anti-money laundering suggestions, best practices or regulations. And, while that has been going on, there has been a serious change in emphasis over time from fighting the narcotics trade to collecting taxes to fighting terrorism.

When Bob Morgenthau started to fight bank secrecy statutes, many countries took the view that it was not their place to enforce the tax laws of another country. They wanted to have bank secrecy in place so that they could profit by assisting people with commission of "fiscal" offenses` or tax fraud. It appears that much of the social acceptance underlying this was based on the post-World-War II tax regime in England (and much of Europe) under which Labor governments set levels of taxation of income and estates so high that much of society was quite willing to violate the law, or at least was willing to support ostensible lawful excuses for tax evasion.

Great Britain, after World War II, became an intellectual centre of bank secrecy practices, designed by the upper classes to protect their family wealth

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3 There are huge numbers of compliance personnel, analysts, computer software specialists and attorneys and others at the major money center banks charged with fighting money laundering and terrorism. They run name checks through data banks, and attempt to analyze transactions. But hey do not at many institutions either know or speak to the customers to ascertain what a transaction represents.

from confiscatory taxes; the intellectual heritage of that tradition continues today, even though the facts have changed enormously since then. Crown colonies and Crown dependencies such as Jersey, Guernsey, Isle of Man, Gibraltar, and Cayman started as offshore financial jurisdictions to assist UK residents. But the tradition of asking no questions left those money centers wide open to abuse by others than British aristocrats seeking to preserve their inherited wealth.

Narcotics dealers, and the money launderers they employed starting in the 1970s, gleefully exploited the bank secrecy practices adopted to protect tax evaders. The money-launderers' use of bank secrecy statutes became the stuff of legend, and fraudsters seeking to hide money other than tax money and narcotics proceeds started to use the same techniques.

By the mid 1990s the European Union and the United States were beginning to attack tax havens bitterly. For the governments it was and still is, a matter of survival. As transnational corporations manage their affairs to minimize taxes paid, they deprive all governments of tax revenue. In Europe and the United States the middle classes have been following their lead. For those of us who believe in the rule of law, depriving democratic governments of revenue by manipulating the laws of offshore havens is exceptionally bad government, as I discuss below.

For a few years in the 1990s it appeared that there would be constant pressure on the offshore jurisdictions to clean up their act. Some jurisdictions have done so, many more wish to create the appearance, but not the reality of having done so, and some are overtly willing to accept dirty money as a source of

business. The certifications by international bodies that nations were "cooperative" may not, in the long run, turn out to be more than pious wishes.

During the decades since the fight for and passage of the Bank Secrecy Act of 1970, the people who launder money for a living have not been passive. They have stayed well ahead of law enforcement in devising new techniques for separating ownership of money and other assets from the responsibilities for that ownership and for the use of the power that ownership bestows. And some of them work at banks, some of them are accountants and some of them are attorneys. As law enforcement has chased old stereotypes, the professional launderers have adjusted to changing conditions.

The old picture of a Colombian drug dealer driving into a bank with valises filled with currency is not now quite accurate. Rather than walk into a U.S. bank with lots of ash, which now would raise questions, smugglers transport most narco-dollars out of the United States for deposit in jurisdictions in which there are no forms to fill out, [4] but other people too work to launder money.

Elegant lawyers, registered lobbyists, and public relations firms all represent the money laundering industry's efforts, even though the industry is still largely based on drug selling in the streets. "Campaign contributions," were in recent years made by groups such as the Texas Bankers Association, to get government to take "a more balanced view" of the anti-money-laundering fight. (When a lobbyist for the American Bankers Association opined, publicly, that a

4 The Colombians have excess dollars; the Russians, for example, want U.S. dollars. It appears that the two groups are working together to launder money outside regular channels for their mutual benefit. I note that the Russians are now seriously involved in the heroin trade with Europe, and suggest, on scanty evidence, that the "businessmen" are far ahead of the regulators and the policemen in this area.

particular bill would not harm the banking industry, he was privately but severely chastised by a senator who had accepted money from the lobbyists for Antigua, and told he must in the future oppose all bills strengthening the fight against narcotics money-laundering, even if the bankers were not adversely affected.)

Many years ago Winston Churchill wrote that he could not engage to remain neutral as between the fire brigade and the fire; that senator wanted the ABA to actually hinder the firemen. I wonder why. Some have suggested it is because the Senator has a visceral distaste for regulation. All that is clear is that his ideology or his financial self-interest (in the campaign contributions) caused him to ignore the reality of what he was doing.

When the narcotics lobby and the anti-tax lobby5 were fighting together against anti-money laundering legislation and regulation, the Board of Governors of the Federal Reserve System proposed new " KYC" regulations, which, after a fight, resulted in their being withdrawn. Individual rights and consumer privacy were advanced as the reasons for the KYC debacle, but the banks use the information sought for their internal commercial use as we speak.

It must be conceded that the KYC regulations, as proposed, were out of date. By the mid 1990s it was no longer appropriate for the full weight of the anti-money laundering fight to be born solely by banks, when financial service providers are all equally available for abuse by the criminals. Merrill Lynch is not a bank for regulatory purposes, and was not been subject to KYC regulation until the USA PATRIOT Act was passed, even though it had, for a while, more money on deposit in its money market accounts than did any bank in the USA.

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5 Tax shelters, if valid, do not need to be secret.

The securities markets likewise are woefully wide open to money-laundering, but until the PATRIOT Act was passed the industry and the SEC took the view that there was no money laundering in the markets.6

The insurance industry is also wide open to abuse; there is little perceptible regulation at all in the insurance field. Recent cases show, however, that insurance companies can easily be used by launderers to cleanse their money at reasonably low cost.

The trust industry has been exceptionally creative, coming up with legal-sounding "trusts" which probably are not lawful in the United States, by which the beneficial ownership of the trust is concealed. So too is the actual control of trust assets. We are seeing trusts with "nominee beneficial owners," which may sound good if you say it quickly, but means nothing but "I won't tell you who the owner is" when analyzed.

In this context we have varying forces at work.

The money-laundering lobby seeks to end all efforts to combat money laundering, sometimes under the guise of privacy, sometimes in an anti-tax mode. The bureaucrats seek to expand their own regulatory anti-money laundering empire. A large pool of people is now engaged, at great effort and expense, to combat money laundering by ticking boxes on forms to see if transactions are "suspicious, " largely because the costs of investigating transactions is so large.7

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6 The work of Neil Jeans, then at the National Crime Squad of England and Wales, demonstrates how easy it is to use the markets to launder money; my own cases tend to support his conclusions.
7 The size of the work-force necessary to police transactions has been forcing all but the largest banks out of the business of transmitting dollars, increasing the concentration of business in few hands.

The Executive Branch reflects several different aspects of this complex situation. Ideologically the administration is opposed to drug dealers and bureaucrats. The Bush designees in the Department of Justice had a far more sophisticated view of money laundering than those in the Clinton administration. (I note that under Clinton efforts to seize currency being exported from the USA were cut way back, even though Justice and Customs knew that we had effectively closed the banking system to dollar deposits, and that the implication was that narcotics dollars had to be exported.)

In addition there is pressure from the United States Senate to combat money laundering effectively. Senator Carl Levin of Michigan, on the Government Operations Committee, and similarly minded colleagues have been seeking to have the financial services community assist in the fight against money-laundering, and terrorism; since September 11, 2001 they have gotten a great deal of help. But the help is from people in compliance and regulation; it needs to be the CEOs, the COOs, and the full operational team of each institution.

The problem which has arisen is that as technology changes, the money-transmission part of banking has become exceedingly vulnerable to customer abuse. The entire problem faced by the Bank of New York ("BNY") in 1997-98 was due to a wonderful set of technological advances the Bank had implemented, without thought as to the possibility of their misuse.

Simply put, BNY allowed customers unfettered access to its computers to receive and transmit wire instructions from anywhere the customer's computer could be reached by telephone. That, today, is anywhere. We could call it

Banking at Home. The use, at the Bank of New York, was restricted to whomever the customer wanted to allow in—itself an invitation to disaster. The technology permitted each customer to engage in correspondent banking with unlicensed correspondents. And following the attacks on the Unites States on September 11, 2001, Congress dealt with that in the USA PATRIOT Act, but the money launderers have changed their tactics, and are using corporate secrecy jurisdictions and trusts to hide the identity of the principals for whom they act.8

In the future, what should we do? It is something this Committee is extremely well suited for. We should work together to establish the rule of law, worldwide. For the reasons I describe below we should join to abolish bank secrecy laws and practices, including corporate secrecy laws and abusive trusts, insofar as they keep evidence from prosecutors and courts. We should fight to abolish corporate secrecy, and refuse to deal with anonymous corporations. We should bar anonymous trusts through which billions of dollars a year pass without the beneficial owners' identities being known, much less being published.

We should make sure that we know or if necessary can learn which people are responsible for each amount of money going through financial institutions. Keep in mind that prosecutors and counter-terrorism agents need evidence to proceed. They need real evidence, not tick marks in boxes on forms. An agent who asks for the name of the person who authorized a transfer of money does not want to be told that the transfer was authorized by a British Virgin Islands company established in Tortola by a Mexico City law firm at the request of a

8 The inclusion in the European Community of nations like Cyprus, with a long history of permitting bank and corporate secrecy, makes European tracing of funds far more difficult than it was.

Swiss lawyer who said that his unnamed client was highly valued. The question was “who authorized the transfer?” The answer should be a name.

An example of the wrong sort of behavior can be found (easily) in Cayman, when, some years ago the Irish authorities were seeking evidence about payments to a Prime Minister of Ireland from the Ansbacher bank. Initially the Cayman court told the Irish authorities to “Get Lost,” citing bank secrecy. A few years later Ansbacher went into Court, because it was under pressure in Ireland to release the evidence. Cayman’s Chief Judge, Anthony Smellie, authorized the bank to release the information as to the flow of funds, but barred the bank from identifying the parties directing the transfers, receiving the money, or controlling the accounts. With that information withheld, the information released was of no value; Cayman continued to keep evidence from the courts and legislature of Ireland, whose processes would have been compromised by bribes, on the intellectually trivial argument that Cayman bank secrecy is more important.

That Cayman view favored criminals. It was not, however, irrational for Cayman to value its secrecy more than Irish integrity, so long as they accept a view of their role in the world as economic parasites, selling their sovereignty for cash to everyone who wants secrecy from courts of law for his business dealings. If they choose to change that view, and they ay, they have to change their behavior.

It is apparent from my perspective that the world economy has become a global marketplace, in which some countries are better able to participate than

others.[9] That is because honest markets demand the rule of law, and some nations either can not or do not choose to be bound by laws. Money laundering, as I define it, is the concealment of evidence from courts of law as to the ownership, origin, or use of funds to evade responsibility for the use.

The Role of Rule of Law in the Business World

The April 18, 1998 edition of the Financial Times asserted editorially that

> At the national level the emerging global standard consists of liberal trade and open financial markets. It demands a high quality of regulation, and independent legal processes, to protect private property and handle bankruptcy. It calls for non-corrupt government. Within this framework prosperity is generated by free competition among profit-seeking companies.

Whether we will ever obtain the utopia of prosperity through free competition among profit seeking companies is something which time will tell. Experience teaches me, however, that high quality regulation, independent legal processes, including independent prosecutors, honest judges, and non-corrupt government are necessary to avoid disaster, even if they can not generate prosperity. What The Financial Times proposed, and what appears to me beneficial, is establishing the rule of law in the worldwide economy. That requires a certain amount of change.

Simply put, in the twenty-odd years since the Reagan-Thatcher era started there has been a revolution in the roles of government and business. Power shifted at an incredible pace from government to business, especially with the end of the Cold War and the diminished need for "National Security" to be pre-eminent. The needs of international business for government are relatively few; they are concerned with everyone getting a level playing field. (I do not suggest that any business wants a level playing field; they each want the edge over their competitors. Collectively that means the field should be level.)

With the arrival of international nihilistic terrorism, such as the attacks on the World Trade Center, however, there are countervailing pressures leading to even stronger anti-money laundering pressures.

Some of the new pressures, such as the USA PATRIOT Act, are having a serious impact on world banking, by, for example, requiring all correspondent banks in the United States to appoint an agent for the service of legal process. It can have that impact and still not affect Bank of New York sorts of money laundering, however. We do not need so much in the way of detailed regulation as wholehearted and honest record keeping, with no place for people to hide from law enforcement the actions they have taken. But that is not the direction in which we are going. We are getting more and more formalistic in our anti-money laundering regulation, without really getting serious about combating the laundering of money.

I am reminded of an old definition—that a fanatic is a person who, having lost sight of his objective, redoubles his efforts. It appears to me that the bank

regulators have lost sight of why it was important for a bank to know its own customer –"KYC" in the regulatory parlance. It is important so that we know who to hold accountable if money is misused, whether to violate securities laws, generate wealth for narcotics dealers, or pay for the care and training of terrorists. Honest, accurate, complete records which can be accessed when necessary by law enforcement is what is needed. Financial institutions may not have the capacity to know everything about their customers, but it is not great burden to require them to maintain hones, complete and comprehensive records of dealings with other people's money. An institution simply has to keep records of the identity of the person who moved money through it.

Banks, brokerage firms and insurance companies and their customers are, or own companies which create value in the world. They are creatures of law, and, by and large, with inevitable exceptions, they try to follow the laws of the countries in which they do business. Banks live by, and rely on, the rule of law in every commercial transaction in which they engage. The honest businesses with which banks deal rely on it as well. But there are other business interests in the world than those which are honest.

It is worth looking at a few patterns involving money laundering.

Being successful in the global economy makes a businessman the target of thieves — of people who want to undercut established manufacturers' prices without incurring their costs. Under the law they can not do this, so they break the law. (I focus on business here, because that is where the money is). Whether the issue is patent, or trademark or copyright, a manufacturer who does not pay royalties can easily undersell one who does.[10]

Necessary Legal Evidence

The rule of law involves the use of legal mechanisms to defend property rights. And the clearest way I know to accomplish that end — to protect production and creation of goods — is to put in jail the people who steal property and to seize or forfeit the proceeds of their crimes. Such actions require the use of courts, and, to be successful in court, the gathering of valid, accurate evidence. Having said that, let me add that collecting such evidence is a daunting task, requiring intensive investigation into the source of goods, and requiring a more complicated, if less manpower-intensive investigation to trace the proceeds of the crime.

Identifying the originators of contraband goods by tracing goods backward starts at the level where the goods are sold. (The goods could be drugs, or stolen goods, or counterfeit goods, it does not matter. I refer to them all as contraband.) One can, theoretically, follow the trail of invoices backwards to the point of original manufacture if the goods are counterfeit or stolen; if, as may well be the case, the invoice trail is false one can, theoretically, accomplish the same end with street level surveillance. But the

10 And, of course, without the royalties or licensing fees there is little economic incentive for inventors, designers, composers, authors or even software writers to work. The condition of man in a state of nature, wrote Thomas Hobbes, is solitary, poor, nasty, brutish and short. The rule of law is an improvement — for everyone.

repeated seizure of street peddlers' wares makes no more of a dent in the illicit commerce in contraband goods than repeated arrests of street dealers stops the flow of narcotics into the United States, and that has not worked. However necessary it is for social purposes to combat street level distribution, it is more effective to deter crime at its source – with the wholesalers and manufacturers. To prove by evidence in a court of law who are the wholesalers and manufacturers there exist two choices.

One can attempt to follow the goods backwards from the point of sale to the point of origin, or one can follow the money from the point of sale back to the beneficiaries. There is a serious problem with tracing the origin of goods, aside from the investigative difficulty, and that has to do with the fact that certain goods, at some point in their origination, are legal until they are mislabeled, and hence are immune from effective seizure.[11] Proof of the receipt of profits, however, is evidence on which one can act. The money, by definition, is the proceeds of the sale of contraband, and hence is the proceeds of crime. By tracing the money to its ultimate beneficiaries one can both seize the money and make a legal case against the human beings who profit from the trade in counterfeit goods (or contraband weapons or drugs).

In that sense following the profits from contraband is far more lucrative and productive — financially and in terms of evidence obtained — than is the tracing of the goods themselves.

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11 I have in mind, for example, watches which can be manufactured inexpensively, and legally, and do not acquire their counterfeit characteristics until a brand name is falsely attached. That step, which can be late in the process, leaves the expensive capital-intensive part of the manufacturing process immune from forfeiture. "How was I to know that the other scoundrel would add a false brand name?" will be the defense offered by a shipper even if he is corrupt and secretly pays the man who adds the false brand name to the watches.

That solution, however, has a major failing, and it is one which needs to be addressed and remedied.

The problem with tracing money to identify the people engaged in profiting from contraband (and it would be the same if the money were being used to fund terrorism) is that there exist hurdles to obtaining valid, legal evidence. Key among the hurdles are bank secrecy laws, corporate secrecy laws and a wholesale use of what are euphemistically called "trusts.". To hold accountable in the world economy those people benefiting from economic crime, the secrecy that such laws foster must be abolished, at least as to law enforcement and anti-terrorism investigations.

Keeping Up with Technology

As the world economy becomes more like a global village we must adjust. We can not afford the peculiar legal quirks of places such as Grand Cayman, or the British Virgin Islands, which operate as havens of secrecy, whether for bank transactions or corporate ownership. The impact — indeed the purpose of those laws — is to facilitate money laundering for the purpose of concealing criminal activity. It is necessary to adjust our view of the equal sovereignty with which we have dignified many nations unworthy of equal treatment in world financial markets.[12] We need to provide for adequately staffed modern legal systems, adjusting to new technologies as technologies change. We need independent and honest prosecutors. We can not afford local corruption anywhere if it impacts on the world economy. As times change we must change with them.

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12 For example, there was a proposal adopted that **all** financial transactions through Antigua, a notorious money-laundering nation be deemed suspicious, which requires any United States licensed financial institution to fill out Suspicious Activity Reports for every transaction involving that country. This tends to make their dealings very expensive, and highlights them all for law enforcement. Antigua responded by paying millions of dollars in a highly focused effort to enlist the support of key United States political leaders, who are in a political position to defeat the law enforcement efforts of the Department of State, the US Treasury, and the Department of Justice.

Simply put, with our current technology it is possible to move money in and out of bank secrecy jurisdictions so fast that investigation becomes almost impossible. In the case of BCCI the bank secrecy statutes of the various jurisdictions in which BCCI operated were such that no one — no auditor, no regulator, indeed no one outside the circle of thieves — knew the true identities of the owners of the bank or of its various borrowers. Without that knowledge it is impossible to evaluate whether transactions are with related parties, or are arms-length deals in which a banker is putting his own money at risk, and is presumably using his best judgment in doing so. Old-fashioned secrecy is out of date. We must adapt.

I suggest that we do so by eliminating bank secrecy statutes as a factor in international trade and finance. In this age of multi-billion dollar a year narcotics trafficking, of 24 hour a day securities markets with international securities frauds as easy to accomplish as lifting the phone and calling abroad, and "asset protection programs" which are a euphonious way of describing frauds on creditors and courts, it is inappropriate for international lawyers and bank regulators to defend in the abstract that which is in reality used to corrupt the public and private lives of the major industrial and financial nations or the world.

Money Laundering and Narcotics

Narcotics massively inflate the problems of violent crime, economic crime, and official corruption with which the District Attorney's office deals every day. The District Attorney's Office is on Centre Street, due south of Park Avenue in Manhattan. Park Avenue at the north of the island has a large population of narcotics addicts, who must burglarize, rob, and steal to feed their narcotics addiction. The money they get goes to

drug dealers, to larger drug dealers, and then into the banking system. South from Harlem on Park Avenue are a large number of the world's banks; BCCI was there, at 320 Park, laundering narcotics money from the junkies committing crimes of theft and violence here. Due South of the District Attorney's Office is the Federal Reserve Bank of New York, where the dirty money was transferred. When we started investigating BCCI the District Attorney decided that bankers laundering narcotics money should be derailed by our office, and if possible sent to jail.

The money that went to BCCI had to get into the banking system, and then be invested, for the drug dealers to profit. Likewise the proceeds from the sale of counterfeit goods has got to get into the banking system for the counterfeiters to benefit. To keep their profits safe, and to keep law enforcement from getting legal evidence against them, the bad guys, be they thieves or counterfeiters, or narcotics dealers (who, after all, are merely homicidal businessmen dealing in unlicensed pharmaceutical products based on cocoa leaves and poppies) need secrecy, which means that they need to launder their money through a bank secrecy or a corporate secrecy jurisdiction — Grand Cayman, British Virgin Islands or the like — before sending it back to Park Avenue for investment. And what we have learned, as I mentioned earlier — and it is frightening — is that the money, once back in New York, is respectable, and can be used to buy influence over the law enforcement and foreign policy decisions of the United States and other nations.[13] The ancient concept used now to validate bank and corporate secrecy is that bank secrecy must be preserved to keep a gentleman's financial affairs confidential. That concept dates back to the days when only "gentlemen" had checking accounts. That

13 See footnote 4.

concept is archaic, and must give way to the current reality. Bank secrecy statutes in international trade and finance are used by crooks, tax evaders, securities fraudsters, counterfeiters and capital flight fellows; they are used by narcotics dealers, but they are not needed by honest folks engaged in honest transactions.[14]

I have said that bank secrecy in international finance must give way to the harsh realities of life. There is no reason why the people on Grand Cayman can not have rigid bank secrecy laws. I for one do not care what they do amongst themselves, so long as they are consenting adults. I do care, however, when they try to merchant their sovereign status and impose their sovereignty on the rest of us to protect narco-dollars or other proceeds of contraband from detection. If the people of Grand Cayman, the British Virgin Islands, or the other countries selling their sovereignty for cash were to have bank secrecy statutes relating only to local residents — not corporations — doing business in their local currency, and not involved in international trade and finance, their laws would be of concern only to themselves. But we are not dealing with that.15

Banks in such countries are taking deposits from people they have never met and from brass-plate companies with no assets except the bank account, and inserting the money into the world monetary system. Most of this is in dollars, and most of it goes through Manhattan.

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14 There are three levels of bank "secrecy" which warrant discussion. There is an obvious interest in privacy - in that no one wants his financial affairs to be open to his competitors, his neighbors or perhaps, his family. At that level only bone-fide criminal investigators and bank regulators can get access to the data. At the next level of secrecy only bank regulators can get access to the identifying information on bank accounts and financial transactions; police officers can not. At the third level not even bank regulators can obtain the identifying information necessary to see if transactions involve relating parties or are being conducted at arms length.

15 When Lichtenstein launders payments from the French government-owned oil company through North African nations and into the coffers of a political party in Germany, Lichtenstein becomes of concern to us all.

Two thirds of the world's trade is conducted in dollars. Far more than 95% of the international dollar transactions clear through New York County in any given day. The current volume, I understand, is about $2.7 trillion on a normal day. One can move that volume of money only by moving it so quickly that it is instantaneous. I remember my shock when I learned that the fastest way for two banks in Hong Kong to settle a dollar transaction was to wire the money from Hong Kong to New York and back again. What that means is that from an evidentiary point of view money in New York can be wired to Grand Cayman, sheltered from further identification, and wired back to New York as an arms-length transaction, when in fact it is not. That money's trip to Grand Cayman, economically harmless a century ago when it required a sailboat, gold coins, and handwritten entries, is infinitely mischievous when it can be done electronically, instantaneously, from a distance, with no one ever going to the island at all.[16]

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w16 One final note on the economic utility of tax havens. Countries, which exist to shelter in untaxed form profits earned from the world's industry and commerce, provide an exceptionally mischievous service which should not be tolerated. The following example comes to mind. A man owns a factory in London which produces widgets. He establishes a sales company offshore in the Caribbean and sells his widgets through that company. Before he established the sales company he made a profit let us say of a million pounds a year on which he paid taxes. After he established the sales company he sold goods at almost no profit from the factory to the sales company and sold the goods at whatever profits he could realize from the sales company to the world market. He paid no taxes. The factory in London still requires fire protection; the garbage must be collected; and he very much expects that the police will protect his premises from depredation by street criminals. His contribution to the cost of those services however is nil. To make matters worse the offshore company is audited if at all by accountants who care only about their audit and not about the expenses of the firm. The hiring of public servants working for countries off-shore to the tax havens for nominal work at high pay which — might be construed by independent observers as bribes — attracts no scrutiny and the tax laws continue to permit this sort of behavior.

The amount of wealth in offshore tax havens is enormous, it is liquid, it is immune from audit and most criminal investigations and it is available to malefactors of great wealth for malicious use without fear of retribution. Given the constant need of politicians the world over for money this pool constitutes a constant temptation to corrupt governments throughout the world while allocating the tax burden of the cost of governments to people without the ability to hide their wealth. The anti-democratic implications and the morally corrupting aspects of this behavior are just becoming known.

What is clear is that, here too, times change. The old idea that one country does not care about the fiscal offenses of another has outlived its usefulness; it is now dangerous. Some years ago, you will recall, the Russian government was so strapped for revenue that it had to go to the oligarchs asking them to pay their taxes. The billions of dollars laundered through the Bank of New York were tax evasion or tax avoidance, and "not really a problem for us." "Not a Problem" that is, until you realize that the Russian government has nuclear, chemical and biological weapons, that the people guarding those weapons need to

Technology has changed world trade and world finance irrevocably in recent years, and we must adjust to that change.

Privacy of Banking vs. Anonymity of Crime

Just as bank secrecy is a criminally malevolent anachronism, so too have secretly owned corporations and anonymous trusts become tools of the trade for the criminal parasites on the world economy. It is only slightly useful to be able to trace funds if the beneficiaries of those funds can conceal their identities. But, following the huge amounts of money involved in the narcotics trade, we have found an entire cottage industry of professionals — bankers, lawyers, accountants, and so-called financial planners — establishing ostensibly legal mechanisms for people to conceal the ownership of money from the courts of the nations in which they choose to live.

Let me give you an example. In one case a British part-time magistrate and his former partner, a lawyer, in London, established a whole series of companies to facilitate securities fraud in New York.

The way the scheme worked, a securities fraudster in New York hired the judge to set up off-shore companies to buy “Reg S stock,” which companies could not be owned by someone who was an American citizen or resident, as the fraudster and his colleagues were. The judge and his partner incorporated the companies in Liberia, witout selecting an “owner” which worked for a while. But then the United States SEC came looking around to see who owned the companies. The British magistrate thereupon hired a Liberian diplomat to falsely state that he was the beneficial owner of the companies. As

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be paid, and that there are terrorists in the world willing to buy the weapons. All of a sudden one understands that the collapse of the Russian government due to non-payment of taxes would be a disaster with worldwide consequences. Or simply, as one of our Supreme Court Justices wrote three quarters of a century ago, ″Taxes are what we pay for civilized society.″

the diplomat had diplomatic immunity, one could reasonably assume that his statement would end the inquiry.[17]

These companies, having been established with no owner, could transfer ownership quite readily; one could transfer their entire assets (a bank account) by "selling" the company without anyone knowing that a transfer had occurred. That transaction, in slightly different form, takes place routinely in the laundering of money we believe originates in the drug trade, but the technique is clearly transferable. In fact, British police, following a narcotics money launderer, found much of the evidence about the Liberian companies. When we got together, by good fortune, the British police provided the evidence to convict our securities fraudsters: they in turn promptly gave evidence against the magistrate, whom the British police proceeded to arrest. It turned out that he had performed his "secret corporation" trick for a large number of people, including a number of New Yorkers.

In another case one of the big accounting firms established a corporation in the Caribbean, and acted as its managing agent. One of my colleagues at the District Attorney's office served the accounting firm with a subpoena, and the firm fatuously asserted that the Caribbean partnership was not the United States partnership, and that they had not been served. Of course both partnerships have the same name, the same signature, the same telephone book — internal — and the Caribbean partners who took direction from New York. So the firm agreed to accept service of the subpoena, but then responded that they did not know who owned the company, and would have to ask the person with whom they dealt.

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17 That it did not is due partly to luck and mostly to the skill of the detectives working on the case, who persuaded the diplomat to cooperate with law enforcement authorities.

Such behavior by professionals is designed to make money out of crime. The lawyers and accountants are establishing formalistic structures specifically designed to defeat those very laws which we need to establish a level playing field. If thieves can hire accountants and attorneys to shield the proceeds of crime, there is a problem with the law.

Money laundering is the process of concealment. To trace the proceeds of crime you need legal, competent, valid evidence.[18] To the extent that contraband is, as it surely is, an attack on legitimate commerce, laws protecting the proceeds of contraband commerce are bad for the economy of the world. And, quite frankly, to the extent that professionals assist this conduct by establishing structures designed prospectively to defeat valid legal claims they too are our enemies.

Times change. The world economy is in flux, and will continue to be. The value of goods and services will vary over time. But if we are to establish a rule of law in the global economy we must forbid the bank secrecy and corporate secrecy laws and traditions which are so inimical to legal, honest, competent evidence — that is, inimical to the truth. Corporations which are creatures of law and are themselves law-abiding must work together to eliminate the use of bank secrecy, corporate secrecy, and other anachronistic legalisms used to shield the proceeds of crime from its victims.

Prior to the USA PATRIOT Act New York State implemented an anti-money laundering law, designed to prosecute the people in the business of laundering money. It was effective November 1, 2000, and applies only to the State of New York. As a state law it covers, among other institutions, the Federal Reserve Bank of New York, the

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18 I say legal because you can, by paying money or otherwise, unlawfully obtain the information from a "bank secrecy" jurisdiction. You just can not use it in court. The rule of law providing for secrecy becomes a rule protecting only the guilty.

Fedwire system, the Clearing House Association and the Clearing House Inter-Bank Payment System (CHIPS) as well as the clearing systems for almost all United States securities and government debt markets. If you deal in United States dollars, other than in currency form, the law affects your business.

The law forbids the laundering through New York of the proceeds of crime, whether the crime took place in New York or in any other jurisdiction. Put simply the law forbids the laundering of the proceeds of specified criminal conduct, whether involving drugs, tax crimes, or other criminal conduct. If the laundering is of drug money, the level of the offense varies with the amount of money. If the criminal conduct involves tax fraud or securities fraud or other criminal conduct, the amounts of money are higher than if drugs were involved, to achieve the same degree of crime.

Besides forbidding the laundering of the proceeds of a broad variety of crimes through New York, the statute specifically forbids the use of the payments and settlements systems to avoid reporting requirements or to advance new crimes. And the law provides that if a financial institution is told that certain funds are the proceeds of what is called “Specified criminal conduct” and the institution engages in the financial transactions anyway, the financial institution is at risk.

And in determining the regulatory climate towards money laundering in New York it is easiest to say that the new law was passed with the strong support of the New York State Banking Department and the Federal Reserve Bank of New York, the two key regulators in the State.

It was proposed by the New York County District Attorney, Robert M.

Morgenthau, who personally lobbied the Legislature to get the bill passed. It is, even now, being enforced.

But laws are not sufficient. We need to persuade other countries to work together with us. The process of persuasion is far different from our dictating what must happen. And in the rational discourse that should attend efforts at persuasion I believe that, for the most part, there are exceedingly strong arguments for an end to the legal tangles caused by bank secrecy, corporate secrecy, and the unbridled use of trusts to conceal the identities of persons moving funds internationally.

As I stated earlier money is power. The ability to move money secretly is the ability to exercise power without responsibility. In this day and age we all live too closely together to permit secrecy concerns for taxes or the like to shelter the identity of the wealthiest felons in the world.

It is worth mentioning that the world financial system is complex. Very few prosecutors understand it; few people examine the flows of funds to see what is happening in the world. The technicians who understand how money is moved, not the compliance departments in the largest institutions, are the people who, if they are persuaded to combat money laundering, can do so. But little effort has been made, as far as I know, to educate the technicians on the evils attendant on their money funds without leaving a trace.

A few months ago I was speaking with a European banker from a smaller institution, who was in the business of paying and receiving United States dollars to and from Cuba, in the face of economic sanctions. The mechanics were interesting. He would send dollars to, say, a Venezuelan bank by making a bank to bank transfer through

New York. Cuban names, bank accounts, and other identifying information would simply not appear on the transfer. He would also send a SWIFT message to the Venezuelan Bank, not through the United States, instructing his Venezuelan banker to put the money into the account of the Cuban bank or company.

So much for that bank and sanctions against Cuba.

If we persuade the banking industry to stop using the bulk bank-to-bank transfers – the SWIFT 202s—we will establish better control over the ultimate beneficiary of the money being moved. But we can not implement such a rule without achieving consensus that it is a good idea. Just as laws depend on the consent of the governed, sanctions can work if they are kept simple, and the cause is perceived to be just. Sanctions can not be implemented and forgotten; the arguments in favor of any sanctions must be kept fresh, and made as often as necessary to keep people persuaded that sanctions, a step short of war, should be maintained.

Thank you.